the goods,[22] the bailor has encroached on the possessory actions of the bailee;[23] contracts are treated as property rights in some jurisdictions, and protected from interference in much the same way.[24]

Truly the modern progress of the law is from contract to property.

The decision in the principal case may, however, be supported on the contract theory. The Bankruptcy Act[25] applies to debts and not to contingent liabilities.[26] Such obligations are not provable under the act and are not released by a discharge. In this case, the property not having descended to the son at the time of his discharge in bankruptcy, no breach of the contract had occurred and the obligation to convey the property when received was not released by the discharge in bankruptcy. M. B. K.

Equity—Estoppel in Pais.—The case of Eaton v. Wilkins[1] presents the interesting question of what constitutes an estoppel in pais to the assertion of a title to real property. The plaintiffs contracted to buy of the defendant Wilkins a certain tract of land. At the time of the execution of the contract the defendant Clifford was present and when requested by the plaintiffs to sign the contract, declined to do so on the ground that he had no interest in the property. The record title was in Wilkins. The plaintiffs, relying on the record title and on the representations of Clifford that he had no interest in the land contracted to purchase the same, believing the title to be in Wilkins. One day before the time set for the transfer of the land to plaintiffs, Clifford filed a deed to an undivided one-half interest in the property. This deed was dated before the execution of the contract. All of these facts were set up in the complaint. The court held that a demurrer to the complaint should have been sustained, among other reasons, because the complaint did not state that the defendant Clifford was apprised of the true state of his own title when he made the above assertions.

The California law in regard to the elements of an estoppel in pais concerning the title to real property was crystallized in the case of Biddle Boggs v. Merced Mining Co.,[2] where the court declares that the following four elements are necessary to constitute such an estoppel; that is, "It must appear, first, that the party making the admission by his declaration or conduct, was apprised of the true state of his own

---

[22] Williston on Sales, Sec. 441.

[23] Lotan v. Cross (1810), 2 Camp. 414.

[24] Pollock on Torts, 8th ed., p. 328.

[25] Bankruptcy Act of 1898, Sec. 63, Fed. St. Ann., Vol. 1, p. 679.

[26] In re Silverman (1899), 101 Fed. 219; In re Arnstein (1899), 101 Fed. 706; Riggin v. Magwire (1872), 82 U. S. 549 (Act of 1841); In re Farlington (1908), 115 Fed. 999; Moch v. Market Street Natl. Bank (1901), 107 Fed. 897; In re Ellis (1900), 98 Fed. 967.

[1] Eaton et al v. Wilkins et al. (1912), 44 Cal. Dec. 404, 127 Pac. 71.

[2] Biddle Boggs v. Merced Mining Co. (1859), 14 Cal. 279.

title; second, that he made the admission with the express intention to deceive, or with such careless and culpable negligence as to amount to constructive fraud; third, that the other party was not only destitute of all knowledge of the true state of the title, but of the means of acquiring such knowledge, and fourth, that he relied directly on such admissions, and will be injured by allowing the truth to be disclosed." Although this case has been repeatedly affirmed and followed in California,[3] a logical conclusion from the reasoning and the principles laid down in other California cases[4] would raise an estoppel even though the first of the above requisites was lacking; that is, where the representations were made in ignorance of the true state of the title, provided such representations were made with the knowledge or the intention that the other party should act on them. This would appear to be more in accord with Section 1962, Subd. 3 of the Code of Civil Procedure which provides that "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it;" and of the following provision of Section 3542 of the Civil Code, which says "Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer."

The decisions of other states are in direct conflict. The early New York case of Storrs v. Barker,[5] held that a father was estopped from asserting a title inherited from his daughter, where he had disclaimed any interest in the land and had encouraged another to buy, although at that time he had no knowledge of his right to the land. The mistake in this case was as to the effect of the law on certain facts, but the later New York cases[6] apply the same rule to the representations made in ignorance of the facts upon which the title is founded. The Pennsylvania case of Maple v. Kussart[7] lays down the rule that silence, unless fraudulent, will not estop a person from asserting his title to land,

---

[3] McCracken v. City of San Francisco (1860), 16 Cal. 591; Davis v. Davis (1864), 26 Cal. 23; Bowman v. Cudworth (1866), 31 Cal. 148; Martin v. Zellerbach (1869), 38 Cal. 300; Montgomery v. Keppel (1888), 75 Cal. 128, 19 Pac. 178; Griffith v. Brown (1896), 76 Cal. 260, 44 Pac. 572; Verdugo Canyon Water Co. v. Verdugo (1908), 152 Cal. 655, 93 Pac. 1021; Watson v. Sutro (1890), 86 Cal. 500, 24 Pac. 172, 25 Pac. 64. 64.

[4] Mitchell v. Read (1858), 9 Cal. 204; Nicholson v. Randall Banking Co. (1900), 139 Cal. 533, 62 Pac. 930; Mills v. Rossiter Eureka, etc. Mfg. Co. (1909), 156 Cal. 167, 104 Pac. 896; Seymour v. Oelrichs (1909), 156 Cal. 782, 106 Pac. 88.

[5] Storrs v. Barker (1822), 6 Johns Ch. 166, 10 Am. Dec. 316.

[6] Thompson v. Simpson (1891), 128 N. Y. 270, 28 N. E. 627; Continental Nat'l Bank v. Nat'l Bank of the Commonwealth (1872), 50 N. Y. 576; Dezell v. Odell (1842), 3 Hill (N. Y.) 215; Trenton Banking Co. v. Duncan (1881), 86 N. Y. 221.

[7] Maple v. Kussart et al. (1866), 53 Pa. St. 348.

but positive acts of encouragement will effect an estoppel even though made in ignorance of the true state of facts. This is apparently the English [8] and the prevailing American doctrine.[9]

M. B. K.

Evidence — Cross-Examination of Character Witness.— The case of the People v. Silva [1] holds that in the cross-examination of a witness who has testified to the good reputation of the defendant, it is proper to show acts of the defendant inconsistent with the character attributed to him by the witness. People v. Mayes [2] is the only case in California sanctioning this form of question. In all the other cases [3] the question is always as to the report, e. g., "Have you not heard that the defendant was arrested for disturbing the peace?" The latter form of question is preferable, for the cross-examination is simply for the purpose of testing the witness' knowledge of the reputation to which he has testified, and should not be permitted to be used as a means of attacking the defendant's character by evidence of specific wrongful acts.[4]

A. M. K.

Evidence — Presumptions.— We are not accustomed to look upon the German courts as entangled in the meshes of precedent. Decided cases are seldom referred to and then only for the reasoning. No artificial weight is given to the reasoning because contained in a judicial opinion. The principle governs, not the case. Yet this freedom appears to be too restricted to satisfy a certain group in Germany. The contention of this group is that principles lack "play in the joints"; that their application to particular cases results in unnecessary injustice. Their demand is for a free law movement where the gaps in the law will not be filled by stretching the nearest principle but by putting the judge in the position of a legislator to do what is right in the particular case under all the circumstances.[1]

---

[8] Freeman v. Cook (1848), 2 Ex. Rep. 654; Slim v. Coucher (1860), 1 De Gex, F. & J. 518; Burrowes v. Lock (1805), 10 Ves. 470; Hobbs v. Norton (1682), 1 Vern. 137, 2 Ch. Ca. 128; Hunsden v. Cheyney (1891), 2 Vern. 150.

[9] Accord: Beardsley v. Foote (1863), 14 Ohio St. 414; Raley v. Williams (1880), 73 Mo. 310; Longworth v. Ashlin (1891), 106 Mo. 155, 17 S. W. 294; New York cases, supra 1 & 2; Pa. cases, supra 7; Kuhl v. The Mayor and Chancellor of Jersey City (1872), 23 N. J. Eq. 84.

Contra: Gjerstaden et al v. Hartzell (1900), 9 N. D. 268, 83 N. W. 230 Dorlarque et al. v. Cress et al. (1874), 71 Ill. 380; Henshaw et al. v. Bissel (1873), 85 U. S. 255, 21 L. Ed. 835.

[1] (Oct. 15, 1912), 15 Cal. App. Dec. 454.

[2] (1896) 113 Cal. 618, 45 Pac. 860.

[3] People v. Ah Lee Doon (1893), 97 Cal. 171, 31 Pac. 933; People v. Moran (1904), 144 Cal. 62, 77 Pac. 777; People v. Perry (1904), 144 Cal. 748, 78 Pac. 284; People v. Weber (1906), 149 Cal. 325, 86 Pac. 71.

[4] Jones on Evidence, Sec. 864; Wigmore on Evidence, Sec. 988.

[1] 74 Central Law Journal, 267.